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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	PR File No. 94-SP1
)	PR File No. 94-SP2
Implementation of Sections)	PR File No. 94-SP3
3(n) and 332 of the)	PR File No. 94-SP4
Communications Act)	PR File No. 94-SP5
)	PR File No. 94-SP6
Regulatory Treatment of)	PR File No. 94-SP7 94-109
Mobile Services)	PR File No. 94-SP8

To: The Commission

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CONSOLIDATED REPLY OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), by its attorney, hereby submits its Consolidated Reply to the Comments of American Mobile Telecommunications Association, Inc. ("AMTA"), E.F. Johnson Company ("Johnson"), Mobile Telecommunications Technologies Corp. ("Mtel"), National Cellular Resellers Association ("NCRA"), Nextel Communications, Inc. ("Nextel"), Paging Network, Inc. ("Paging Network"), and the Personal Communications Industry Association ("PCIA") (referred to collectively hereinafter as "Commenters") to the Petitions of the States of Arizona, California, Connecticut, Hawaii, Louisiana, New York, Ohio and Wyoming to extend rate regulation of Commercial Mobile Radio Services ("Petitions"). This Reply is being filed on a consolidated basis due to the identical substance of the aforementioned Comments for each of the above-captioned markets.

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I. STATEMENT OF INTEREST

RCA is an association comprised of small cellular operators providing service to rural America. RCA's members serve over eighty licensed areas across the country encompassing approximately 6.5 million people. The majority of the area served by RCA member companies is rural in nature. RCA member companies are affiliated with Local Exchange Carriers ("LECs"). The Petitions seek authority to regulate cellular carriers at the state level. Accordingly, RCA has a vested interest in the outcome of this proceeding.

II. DISCUSSION

RCA agrees with the Comments filed in response to each of the Petitions to the extent they oppose state regulation of CMRS. Commenters correctly state that pursuant to Section 332 of the Communications Act of 1934, as amended, competition within the petitioning states is adequate to protect consumers and that CMRS service is not a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within those states. However, many Commenters have requested an exemption for non-cellular services in the event the Petitions are granted.¹ RCA strongly opposes any attempt to accord special regulatory treatment to a certain segment of CMRS services.

Carving out a special exemption from state regulation for non-cellular services, as requested, would be entirely inconsistent

¹ See, e.g., Mtel Comments at p. 6; PCIA Comments at p. 1.

with the concept of regulatory parity underlying the adoption of the Omnibus Budget Reconciliation Act of 1993. This concept is based on the assumption that cellular and non-cellular commercial mobile radio services compete with each other in the same general market for mobile telecommunications services. As the FCC recently concluded in its Third Report and Order in its regulatory parity proceeding, "all commercial mobile radio services compete with one another, or have the potential to compete with one another." Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Third Report and Order, FCC 94-212 (released September 23, 1994) ("Third Report and Order"). Indeed, in addition to the other licensed cellular carrier in a particular market, a cellular licensee is or will be subject to competition from providers of specialized mobile radio ("SMR") service (including ESMR, wide-area and traditional SMR), paging service, personal communications service ("PCS") and resellers of cellular service.²

Such competition would be hindered, in contravention of Congressional and Commission intent, by a decision to subject one class of CMRS provider to state regulation, but free another class of CMRS provider from such regulation. Indeed, subjecting cellular and non-cellular CMRS providers to disparate regulatory treatment would clearly disserve the public interest. For example,

² NCRA argues in its Comments that the duopoly system of cellular licensing is anticompetitive. NCRA Comments at p. 3. Such a claim is incorrect and misleading. Not only do cellular resellers act as additional cellular providers in a market, SMR, paging and other services provide effective competition as well.

subjecting only cellular carriers to state rate regulation would afford their CMRS competitors advance knowledge of cellular rate changes and provide the competitors with an opportunity to respond in advance with their own rate changes. Such an occurrence would deprive consumers of the full benefits of CMRS competition.

Notwithstanding the public interest detriment of Commenters' proposed action, Commenters have failed to provide evidence that would allow the states to meet their burden of proof under Section 20.13 of the Commission's rules. Commenters have provided no evidence to support their contention that the cellular market is noncompetitive. Nor have they provided any persuasive rationale why the Commission should depart from Congressional intent to create a regulatory disparity in the commercial mobile radio services marketplace.

WHEREFORE, THE PREMISES CONSIDERED, the Rural Cellular Association respectfully requests that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:



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CERTIFICATE OF SERVICE

I, Caressa D. Bennet, Regulatory Counsel for the Rural Cellular Association, do hereby certify that a copy of the foregoing "Consolidated Reply of the Rural Cellular Association" was mailed by First Class U.S. Mail, postage prepaid, this 4th day of October 1994 to the following:

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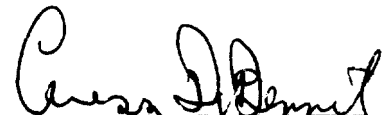
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